

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

FERNANDO FRIAS,

Plaintiff,

v.

PATENAUDE & FELIX, A.P.C.,

Defendant.

No. 2:20-cv-00805-JCC

STIPULATED PROTECTIVE ORDER

~~PROPOSED~~

Before the Court is the parties' Amended Stipulated Motion for a Protective Order. (Dkt. No. 28.) The parties previously submitted a stipulated protective order (Dkt. No. 26), which the Court denied for lack of any cause supporting what appeared to be significant deviations from the Court's model protective order. (Dkt. No. 27.) In doing so, the Court pointed out that the redline version of the parties' stipulation failed to reflect material that had been deleted from the corresponding section of the model order. (*See id.*) That flaw remains in the parties' amended submission. The Court has reinserted the deleted provision from the model order and made other *de minimis* revisions consistent with sound discovery practice.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The

1 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer
2 blanket protection on all disclosures or responses to discovery, the protection it affords from
3 public disclosure and use extends only to the limited information or items that are entitled to
4 confidential treatment under the applicable legal principles, and it does not presumptively
5 entitle parties to file confidential information under seal. This stipulation is not an agreement
6 that any particular document or category of documents is discoverable, but is intended to
7 protect only those documents that are produced and which are entitled to protection.

8 2. "CONFIDENTIAL" MATERIAL

9 "Confidential" material shall include the following documents and tangible things
10 produced or otherwise exchanged:

- 11 1. Company records that identify non-parties and their personal information
- 12 2. Confidential information in personnel files. This designation includes, but is not
13 limited to, such categories of information as medical information, social security numbers,
14 financial information, unlisted phone numbers, and other nonpublic personal identifiers as are
15 protected by statute, or personal information as protected by Art. I, sec. 7 of the Washington
16 Constitution.

17 3. Proprietary and confidential business information, as contemplated by
18 CR 26(c)(7), including.

- 19 a. Company policies and procedures,
- 20 b. Competitive information of the company, including business models and
21 business plans, to the extent that they reveal trade secrets and sensitive
22 proprietary or financial information with a potential negative impact on
23 associated business interests and are not directly relevant to the central
24 issues of the case, and
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1 5. Financial and banking information from any party.

2 Designation as FOR ATTORNEY'S EYES ONLY ("AEO"): A party may designate
3 information as AEO if, in the good faith and reasonable belief of such party and its counsel, the
4 information is among that reasonably considered to be most sensitive by the party, including
5 but not limited to trade secrets or other confidential research, development, financial or other
6 commercial information. Information designated AEO must be viewed only by counsel of the
7 receiving party, and in rare circumstances, by independent experts of the receiving party only
8 when absolutely necessary, and only where the expert has agreed to non-disclosure to anyone
9 but the attorneys. Under no circumstance should information designated AEO be disclosed to
10 the receiving party. This designation should be used sparingly and only for truly sensitive
11 information. Without limiting what may be considered AEO, AEO materials include
12 information and documents related to collection of debts from non-party debtors to the extent
13 they are not already public record.

14 3. SCOPE

15 The protections conferred by this agreement cover not only confidential material (as
16 defined above), but also (1) any information copied or extracted from confidential material; (2)
17 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
18 conversations, or presentations by parties or their counsel that might reveal confidential
19 material. However, the protections conferred by this agreement do not cover information that
20 is in the public domain or becomes part of the public domain through trial or otherwise.

21 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

22 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
23 produced by another party or by a non-party in connection with this case only for prosecuting,
24 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
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1 the categories of persons and under the conditions described in this agreement. Confidential
2 material must be stored and maintained by a receiving party at a location and in a secure
3 manner that ensures that access is limited to the persons authorized under this agreement.

4 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Excluding AEO materials,
5 unless otherwise ordered by the court or permitted in writing by the designating party, a
6 receiving party may disclose any confidential material only to:

7 (a) the receiving party’s counsel of record in this action, as well as employees of
8 counsel to whom it is reasonably necessary to disclose the information for this litigation;

9 (b) the officers, directors, and employees (including in house counsel) of the receiving
10 party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that
11 a particular document or material produced is for Attorney’s Eyes Only and is so designated;

12 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation
13 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (d) the court, court personnel, and court reporters and their staff;

15 (e) copy or imaging services retained by counsel to assist in the duplication of
16 confidential material, provided that counsel for the party retaining the copy or imaging service
17 instructs the service not to disclose any confidential material to third parties and to immediately
18 return all originals and copies of any confidential material;

19 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
20 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
21 A), unless otherwise agreed by the designating party or ordered by the court. Pages of
22 transcribed deposition testimony or exhibits to depositions that reveal confidential material
23 must be separately bound by the court reporter and may not be disclosed to anyone except as
24 permitted under this agreement;
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1 (g) the author or recipient of a document containing the information or a custodian or
2 other person who otherwise possessed or knew the information.

3 (h) insurance carriers and their claims representatives, for the purpose of analyzing and
4 valuing the potential claims;

5 4.3 Filing Confidential Material. Before filing confidential material or discussing or
6 referencing such material in court filings, the filing party shall confer with the designating
7 party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating
8 party will remove the confidential designation, whether the document can be redacted, or
9 whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g)
10 sets forth the procedures that must be followed and the standards that will be applied when a
11 party seeks permission from the court to file material under seal. A party who seeks to maintain
12 the confidentiality of its information must satisfy the requirements of Local Civil Rule
13 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement
14 will result in the motion to seal being denied, in accordance with the strong presumption of
15 public access to the Court's files.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or
18 non-party that designates information or items for protection under this agreement must take
19 care to limit any such designation to specific material that qualifies under the appropriate
20 standards. The designating party must designate for protection only those parts of material,
21 documents, items, or oral or written communications that qualify, so that other portions of the
22 material, documents, items, or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this agreement.
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1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
2 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
3 unnecessarily encumber or delay the case development process or to impose unnecessary
4 expenses and burdens on other parties) expose the designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it designated
6 for protection do not qualify for protection, the designating party must promptly notify all other
7 parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
10 ordered, disclosure or discovery material that qualifies for protection under this agreement must
11 be clearly so designated before or when the material is disclosed or produced.

12 (a) Information in documentary form: (e.g., paper or electronic documents and
13 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
15 contains confidential material. If only a portion or portions of the material on a page qualifies
16 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
17 making appropriate markings in the margins).

18 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties
19 must identify on the record, during the deposition, hearing, or other proceeding, all protected
20 testimony, without prejudice to their right to so designate other testimony after reviewing the
21 transcript. Any party or non-party may, within fifteen days after receiving a deposition
22 transcript, designate portions of the transcript, or exhibits thereto, as confidential.

23 (c) Other tangible items: the producing party must affix in a prominent place on the
24 exterior of the container or containers in which the information or item is stored the word
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1 “CONFIDENTIAL” or “ATTORNEY EYES ONLY.” If only a portion or portions of the
2 information or item warrant protection, the producing party, to the extent practicable, shall
3 identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
5 designate qualified information or items does not, standing alone, waive the designating party’s
6 right to secure protection under this agreement for such material. Upon timely correction of a
7 designation, the receiving party must make reasonable efforts to ensure that the material is
8 treated in accordance with the provisions of this agreement.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
11 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
13 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
14 challenge a confidentiality designation by electing not to mount a challenge promptly after the
15 original designation is disclosed.

16 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
17 regarding confidential designations without court involvement. Any motion regarding
18 confidential designations or for a protective order must include a certification, in the motion or
19 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
20 conference with other affected parties in an effort to resolve the dispute without court action.
21 The certification must list the date, manner, and participants to the conference. A good faith
22 effort to confer requires a face-to-face meeting or a telephone conference.

23 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
24 intervention, the designating party may file and serve a motion to retain confidentiality under
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1 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
2 persuasion in any such motion shall be on the designating party. Frivolous challenges, and
3 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
4 burdens on other parties) may expose the challenging party to sanctions. All parties shall
5 continue to maintain the material in question as confidential until the court rules on the
6 challenge.

7 In the event that the protected or confidential status of a document is challenged shortly
8 before a motion, response or reply is to be filed, so that there may not be adequate time to for
9 the Court to resolve the issue, then, subject to Section 4.3 of this Order, the Parties agree that
10 the challenged documents may be submitted to the Court under seal, along with a motion to
11 seal, in accordance with Local Civil Rule 5(g), until such time as the Court rules on the
12 confidentiality designation.

13 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
14 OTHER LITIGATION

15 If a party is served with a subpoena or a court order issued in other litigation that
16 compels disclosure of any information or items designated in this action as
17 “CONFIDENTIAL,” or “ATTORNEY EYES ONLY” that party must:

18 (a) promptly notify the designating party in writing and include a copy of the subpoena
19 or court order;

20 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
21 other litigation that some or all of the material covered by the subpoena or order is subject to
22 this agreement. Such notification shall include a copy of this agreement; and

23 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
24 designating party whose confidential material may be affected.
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1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 confidential material to any person or in any circumstance not authorized under this agreement,
4 the receiving party must immediately (a) notify in writing the designating party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
6 protected material, (c) inform the person or persons to whom unauthorized disclosures were
7 made of all the terms of this agreement, and (d) request that such person or persons execute the
8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery
15 order or agreement that provides for production without prior privilege review. Parties shall
16 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

17 10. NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving
19 party must return all confidential material to the producing party, including all copies, extracts
20 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
21 destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
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1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
2 work product, even if such materials contain confidential material.

3 The confidentiality obligations imposed by this agreement shall remain in effect until a
4 designating party agrees otherwise in writing or a court orders otherwise

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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7 DATED: This 15th Day of September

/s/ Jason D. Anderson

8 Mr. Jason D. Anderson, WSBA No. 38014

9 Mr. T. Tyler Santiago, WSBA No. 46004

Attorneys for Plaintiff

Anderson Santiago, PLLC

10 787 Maynard Ave. S.

11 Seattle, WA 98104

12 Phone (206) 395-2665

13 Fax (206) 395-2719

E-mail jason@alkc.net

E-mail tyler@alkc.net
14

15 DATED: This 15th Day of September

/s/ Jeff M. Dore

16 Marc Rosenberg, WSBA No. 31034

17 Jeff M. Dore, WSBA No. 44951

Of Attorneys for Defendant Patenaude &
Felix, A.P.C

18 701 Pike Street, Suite 1800

19 Seattle, WA 98101

20 Phone (206) 624-7990

21 Fax (206) 624-5944

E-mail mr@leesmart.com

E-mail jd@leesmart.com
22 //

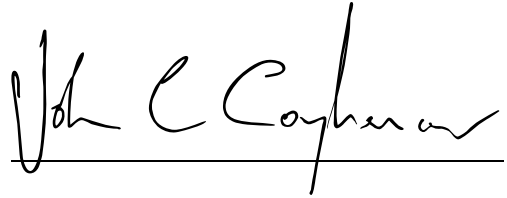
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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3 DATED this 20th day of September 2021
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7 Hon. John C. Coughenour
8 U.S. District Court Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on
_____ [date] in the case of Frias v. Patenaude & Felix, APC, Western District of
Washington, Case No. 2:20-cv-00805-JCC. I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____